

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of Petition  
of  
N. K. WINSTON CORPORATION et al  
for refund of franchise tax under  
Article 9-A of the tax law for the  
fiscal year ended February 29, 1972.  
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N. K. Winston Corporation having filed a petition for refund of franchise tax under Article 9-A of the tax law for the fiscal year ended February 29, 1972, and a hearing having been held at the office of the State Tax Commission, State Campus, Albany, New York, at which hearing Lester Hochberg, Esq. of Counsel appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) N. K. Winston Corporation (hereafter called "Winston") requested permission to file a combined return for the fiscal year ended February 29, 1972 on behalf of itself and eleven wholly owned subsidiaries as follows:

Walt Whitman Center, Inc.  
Walt Whitman Management, Inc.  
C.S.V. Realty Corp. (liquidated into Winston on  
February 25, 1972)  
Rochelle Tenant Corp.  
N. K. Winston New Rochelle Corp. (liquidated into  
Rochelle Tenant Corp. on November 11, 1971)  
Winston Mall, Inc.  
Smithhaven Mall, Inc. (inactive name-holding corporation)  
W.N.R. Development Corp. (inactive)  
New York N. K. Winston Muss Corp. (inactive)  
Urban Construction Corporation (inactive)  
Lantrom Realty Corp. (inactive)

The Corporation Tax Bureau denied permission to file on a combined basis and the respective corporations paid taxes aggregating \$522,632.81 on an individual basis and filed a petition

for refund. A combined return filed by the taxpayer for information purposes indicates a combined tax of \$40,876.00 plus \$125.00 minimum tax due from each of the eleven subsidiaries or an aggregate combined tax of \$42,251.00.

(2) Winston and the six active subsidiaries listed are engaged in real estate activities consisting principally of the development, ownership and operation of shopping centers and other improved and unimproved realty. Winston, in general, performs managerial functions for its subsidiaries such as initiating new project developments, supervising construction and leasing activities, arranging financing, advancing funds for preliminary development and working capital, handling legal matters, etc. The other five corporations listed were inactive during the fiscal year ended February 29, 1972.

(3) All of the six active subsidiaries conducted their operations entirely within New York State and did not qualify for an allocation of business income and business capital. Accordingly, their business allocation percentage was 100%.

Winston, the parent corporation, conducted operations both within and without New York State and qualified for an allocation of business income and business capital. Its business allocation percentage on an individual basis was 38.5178% computed on the three factor statutory basis as follows:

	<u>New York</u> <u>(Numerator)</u>	<u>Everywhere</u> <u>(Denominator)</u>	<u>%</u>
Real and Tangible			
Personal Property	\$1,229,295	\$8,599,599	14.3784
Receipts	259,481	2,290,160	11.3303
Wages	401,361	446,727	89.8449
Total Percentages			<u>115.5536</u>
Business Allocation Percentage (115.5536 divided by 3)			38.5178

In addition to the six active and five inactive subsidiaries which were requested to be included in the combined return, Winston had numerous other wholly owned subsidiaries which conducted their operations entirely outside New York.

(4) Section 211.4 of Article 9-A of the tax law reads in part:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations . . . may be required or permitted to make a report on a combined basis covering any such other corporations . . ."

The State Tax Commission hereby

DECIDES:

(A) Winston and the six active subsidiaries are engaged in some aspect of real estate operations, the results of which are more properly reflected on an individual basis. A combined return would produce a distorted result, in that losses of unprofitable corporations would be offset against income of other corporations. Individual corporations engaged in activities dealing with real estate do not constitute a unitary business, since the profit or loss of each corporation is primarily due to its own operations, instead of being due to intercompany transactions. In addition, commingling the operations of Winston, whose properties are principally located outside New York, with the six subsidiaries whose properties are entirely located in New York, would result in a further two-fold distortion. Taxation on a combined basis would (1) assign a portion of the business capital and business income of the six subsidiaries to outside New York and (2) assign to New York a portion of the business loss and business capital of the parent chiefly situated outside New York. Computation of tax liability on an individual basis more properly reflects results of operations conducted in New York.

With respect to the five inactive subsidiaries, it has been the consistent policy of the Tax Commission that inactive corporations should be taxed on an individual basis.

(B) Computation of tax liability on an individual basis is affirmed and taxpayer's petition for refund is denied.

Dated: Albany, New York  
this 21st of August 1974.

STATE TAX COMMISSION

  
President

  
Commissioner

  
Commissioner